

AMENDED IN ASSEMBLY APRIL 14, 2009

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

ASSEMBLY BILL

No. 568

Introduced by Assembly Member Lieu

February 25, 2009

An act to add Chapter 4 (commencing with Section 17800) to Part 3 of Division 7 of the Business and Professions Code, and to amend Section 1161 of the Code of Civil Procedure, relating to counterfeit goods.

LEGISLATIVE COUNSEL'S DIGEST

AB 568, as amended, Lieu. Counterfeit goods: unlawful detainer.

Existing law provides that every building or place used for the purpose of unlawfully selling, serving, storing, keeping, giving away, or manufacturing controlled substances, and every building or place wherein or upon which these acts take place, is a nuisance that shall be enjoined, abated, and prevented, whether it is a public or private nuisance. Existing law authorizes a district attorney, county counsel, city attorney, or citizen, as specified, to maintain an action to abate and prevent the nuisance and perpetually to enjoin the person conducting or maintaining it, and the owner, lessee, or agent of the building or place in or upon which the nuisance exists from directly or indirectly maintaining or permitting the nuisance.

This bill would provide that every building or place used for the purpose of willfully manufacturing, intentionally selling, or knowingly possessing for sale any *counterfeit goods, defined to include* counterfeit of a registered mark *or any recording or audiovisual work, the cover, box, jacket, or label of which does not disclose specified information*, is a nuisance that shall be enjoined, abated, and prevented, whether it

is a public or private nuisance. The bill would authorize a district attorney, county counsel, city prosecutor, city attorney, or citizen, as specified, to maintain an action to abate and prevent the nuisance and perpetually to enjoin the person conducting or maintaining it, and the owner, lessee, or agent of the building or place in or upon which the nuisance exists from directly or indirectly maintaining or permitting the nuisance. The bill would provide that a violation or disobedience of the injunction or order for abatement is punishable as a contempt of court by a specified fine and imprisonment. The bill would make *changes to* related provisions.

Because this bill would provide for criminal penalties, it would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Chapter 4 (commencing with Section 17800) is
2 added to Part 3 of Division 7 of the Business and Professions Code,
3 to read:

4
5 CHAPTER 4. COUNTERFEITING ABATEMENT
6

7 17800. (a) Every building or place used for the purpose of
8 willfully manufacturing, intentionally selling, or knowingly
9 possessing for sale ~~any counterfeit of a mark registered with the~~
10 ~~Secretary of State or registered on the Principal Register of the~~
11 ~~United States Patent and Trademark Office, sale any counterfeit~~
12 ~~goods~~ is a nuisance which shall be enjoined, abated, and prevented,
13 and for which damages may be recovered, whether it is a public
14 or private nuisance.

15 (b) *As used in this chapter, "counterfeit goods" means (1) any*
16 *counterfeit of a mark registered with the Secretary of State or*
17 *registered on the Principal Register of the United States Patent*
18 *and Trademark Office or (2) any recording or audiovisual work,*

1 *the cover, box, jacket, or label of which does not disclose the*
2 *information as specified in subdivision (a) of Section 653w of the*
3 *Penal Code.*

4 17801. Whenever there is reason to believe that a nuisance as
5 described in Section 17800 is kept, maintained, or exists in any
6 county, the district attorney of the county, the county counsel, or
7 the city prosecutor or city attorney of any incorporated city or of
8 any city and county, in the name of the people, may, or any citizen
9 of the state resident in the county, in his or her own name, may
10 maintain an action to abate and prevent the nuisance and
11 perpetually to enjoin the person conducting or maintaining it, and
12 the owner, lessee, or agent of the building or place in or upon
13 which the nuisance exists from directly or indirectly maintaining
14 or permitting the nuisance.

15 17802. (a) To effectuate the purposes of this chapter, the
16 district attorney, the county counsel, city prosecutor, or city
17 attorney may file, in the name of the people, an action for unlawful
18 detainer against any person who is in violation of the nuisance or
19 illegal purpose provisions of subdivision 4 of Section 1161 of the
20 Code of Civil Procedure, with respect to ~~counterfeit goods~~ *a*
21 *counterfeit goods purpose*. In filing this action, which shall be
22 based upon an arrest report or on another action or report by a
23 regulatory or law enforcement agency, the district attorney, county
24 counsel, city prosecutor, or city attorney shall utilize the procedures
25 set forth in Chapter 4 (commencing with Section 1159) of Title 3
26 of Part 3 of the Code of Civil Procedure, except that in cases filed
27 under this section, the following also shall apply:

28 (1) (A) Prior to filing an action pursuant to this section, the
29 district attorney, county counsel, city prosecutor, or city attorney
30 shall give 30 calendar days' written notice to the owner, requiring
31 the owner to file an action for the removal of the person who is in
32 violation of the nuisance or illegal purpose provisions of
33 subdivision 4 of Section 1161 of the Code of Civil Procedure with
34 respect to a counterfeit *goods* purpose.

35 (B) This notice shall include sufficient documentation
36 establishing a violation of the nuisance or illegal purpose provisions
37 of subdivision 4 of Section 1161 of the Code of Civil Procedure
38 and shall be served upon the owner and the tenant in accordance
39 with subdivision (e).

1 (C) The notice to the tenant shall also include on the bottom of
2 its front page, in at least 14-point bold type, the following:

3
4 “Notice to Tenant: This notice is not a notice of eviction.

5
6 However, you should know that an eviction action may soon
7 be filed in court against you for suspected counterfeit goods
8 activity, as described above.

9 You should call (insert name and telephone number of the
10 district attorney, county counsel, city prosecutor, or city
11 attorney pursuing the action) or legal aid to stop the eviction
12 action if any of the following is applicable:

13 (i) You are not the person named in this notice.

14 (ii) The person named in the notice does not live with you.

15 (iii) The person named in the notice has permanently moved.

16 (iv) You do not know the person named in the notice.

17 (v) You have any other legal defense or legal reason to stop
18 the eviction action.

19 A list of legal assistance providers is attached to this notice.
20 Some provide free legal help if you are eligible.”

21
22 (D) The owner shall, within 30 calendar days of the mailing of
23 the written notice, either provide the district attorney, county
24 counsel, city prosecutor, or city attorney with all relevant
25 information pertaining to the unlawful detainer case, or provide a
26 written explanation setting forth any safety-related reasons for
27 noncompliance, and an assignment to the district attorney, county
28 counsel, city prosecutor, or city attorney of the right to bring an
29 unlawful detainer action against the tenant.

30 (E) The assignment shall be on a form provided by the district
31 attorney, county counsel, city prosecutor, or city attorney and may
32 contain a provision for costs of investigation, discovery, and
33 reasonable attorney’s fees, in an amount not to exceed six hundred
34 dollars (\$600).

35 (F) If the district attorney, county counsel, city prosecutor, or
36 city attorney accepts the assignment of the right of the owner to
37 bring the unlawful detainer action, the owner shall retain all other
38 rights and duties, including the handling of the tenant’s personal
39 property, following issuance of the writ of possession and its
40 delivery to and execution by the appropriate agency.

1 (2) Upon the failure of the owner to file an action pursuant to
2 this section, or to respond to the district attorney, county counsel,
3 city prosecutor, or city attorney as provided in paragraph (1), or
4 having filed an action, if the owner fails to prosecute it diligently
5 and in good faith, the district attorney, county counsel, city
6 prosecutor, or city attorney may file and prosecute the action and
7 join the owner as a defendant in the action. This action shall have
8 precedence over any similar proceeding thereafter brought by the
9 owner, or to one previously brought by the owner and not
10 prosecuted diligently and in good faith. Service of the summons
11 and complaint upon the defendant owner shall be in accordance
12 with Sections 415.10, 415.20, 415.30, 415.40, and 415.50 of the
13 Code of Civil Procedure.

14 (3) If a jury or court finds the defendant tenant guilty of unlawful
15 detainer in a case filed pursuant to paragraph (2), the district
16 attorney, county counsel, city prosecutor, or city attorney may be
17 awarded costs, including the costs of investigation and discovery
18 and reasonable attorney's fees. These costs shall be assessed against
19 the defendant owner, to whom notice was directed pursuant to
20 paragraph (1), and once an abstract of judgment is recorded, it
21 shall constitute a lien on the subject real property.

22 (4) Nothing in this chapter shall prevent a local governing body
23 from adopting and enforcing laws, consistent with this chapter,
24 relating to counterfeit goods enforcement. Where local laws
25 duplicate or supplement this chapter, this chapter shall be construed
26 as providing alternative remedies and not preempting the field.

27 (5) Nothing in this chapter shall prevent a tenant from receiving
28 relief against a forfeiture of a lease pursuant to Section 1179 of
29 the Code of Civil Procedure.

30 (b) In any proceeding brought under this section, the court may,
31 upon a showing of good cause, issue a partial eviction ordering
32 the removal of any person, including, but not limited to, members
33 of the tenant's household, if the court finds that the person has
34 engaged in the activities described in subdivision (a). Persons
35 removed pursuant to this section may be permanently barred from
36 returning to or reentering any portion of the entire premises. The
37 court may further order as an express condition of the tenancy that
38 the remaining tenants shall not give permission to or invite any
39 person who has been removed pursuant to this subdivision to return
40 to or reenter any portion of the entire premises.

(c) For the purposes of this section, “counterfeit goods purpose” means willfully manufacturing, intentionally selling, or knowingly possessing for sale (1) any counterfeit of a mark registered with the Secretary of State or registered on the Principal Register of the United States Patent and Trademark Office or (2) any recording or audiovisual work, the cover, box, jacket, or label of which does not disclose the information as specified in subdivision (a) of Section 653w of the Penal Code.

(d) Notwithstanding subdivision (b) of Section 68097.2 of the Government Code, a public entity may waive all or part of the costs incurred in furnishing the testimony of a peace officer in an unlawful detainer action brought pursuant to this section.

(e) The notice and documentation described in paragraph (1) of subdivision (a) shall be given in writing and may be given either by personal delivery or by deposit in the United States mail in a sealed envelope, postage prepaid, addressed to the owner at the address known to the public entity giving the notice, or as shown on the last equalized assessment roll, if not known. Separate notice of not less than 30 calendar days and documentation shall be provided to the tenant in accordance with this subdivision. Service by mail shall be deemed to be completed at the time of deposit in the United States mail. Proof of giving the notice may be made by a declaration signed under penalty of perjury by any employee of the public entity that shows service in conformity with this section.

17803. For purposes of this chapter, an action to abate a nuisance may be taken by the district attorney of the county, the county counsel, the city attorney, or the city prosecutor of the city or city and county within which the nuisance exists, is kept, or is maintained. An action by a county counsel, city attorney, or city prosecutor shall be accorded the same precedence as an action maintained by the district attorney of the county.

17804. Unless filed by the district attorney, county counsel, city prosecutor, or city attorney, the complaint in the action shall be verified.

17805. (a) If the existence of the nuisance is shown in the action to the satisfaction of the court or judge, either by verified complaint or affidavit, the court or judge shall allow a temporary restraining order or injunction to abate and prevent the continuance or recurrence of the nuisance.

1 (b) A temporary restraining order or injunction may enjoin
2 subsequent owners, commercial lessees, or agents who acquire the
3 building or place where the nuisance exists with notice of the
4 temporary restraining order or injunction, specifying that the owner
5 of the property subject to the temporary restraining order or
6 injunction shall notify any prospective purchaser, commercial
7 lessee, or other successor in interest of the existence of the order
8 or injunction, and of its application to successors in interest, prior
9 to entering into any agreement to sell or lease the property. The
10 temporary restraining order or injunction shall not constitute a title
11 defect, lien, or encumbrance on the real property.

12 17806. (a) At the time of application for issuance of a
13 temporary restraining order or injunction pursuant to Section
14 17805, if proof of the existence of the nuisance depends, in whole
15 or part, upon the affidavits of witnesses who are not peace officers,
16 upon a showing of prior threats of violence or acts of violence by
17 any defendant or other person, the court may issue orders to protect
18 those witnesses, including, but not limited to, nondisclosure of the
19 name, address, or any other information which may identify those
20 witnesses.

21 (b) A temporary restraining order or injunction issued pursuant
22 to Section 17805 may include closure of the premises pending trial
23 when a prior order or injunction does not result in the abatement
24 of the nuisance. The duration of the order or injunction shall be
25 within the court's discretion. In no event shall the total period of
26 closure pending trial exceed one year. Prior to ruling on a request
27 for closure, the court may order that some or all of the rent
28 payments owing to the defendant be placed in an escrow account
29 for a period of up to 90 days or until the nuisance is abated. If the
30 court subsequently orders a closure of the premises, the money in
31 the escrow account shall be used to pay for relocation assistance
32 pursuant to subdivision (d). In ruling upon a request for closure,
33 whether for a defined or undefined duration, the court shall consider
34 all of the following factors:

35 (1) The extent and duration of the nuisance at the time of the
36 request.

37 (2) Prior efforts by the defendant to comply with previous court
38 orders to abate the nuisance.

39 (3) The nature and extent of any effect that the nuisance has
40 upon other persons, such as residents or businesses.

1 (4) Any effect of prior orders placing displaced residents' or
2 occupants' rent payments into an escrow account upon the
3 defendant's efforts to abate the nuisance.

4 (5) The effect of granting the request upon any resident or
5 occupant of the premises who is not named in the action, including
6 the availability of alternative housing or relocation assistance, the
7 pendency of any action to evict a resident or occupant, and any
8 evidence of participation by a resident or occupant in the nuisance
9 activity.

10 (c) In making an order of closure pursuant to this section, the
11 court may order the premises vacated and may issue any other
12 orders necessary to effectuate the closure. However, all tenants
13 who may be affected by the order shall be provided reasonable
14 notice and an opportunity to be heard at all hearings regarding the
15 closure request prior to the issuance of any order.

16 (d) In making an order of closure pursuant to this section, the
17 court shall order the defendant to provide relocation assistance to
18 any tenant ordered to vacate the premises, provided the court
19 determines that the tenant was not actively involved in the nuisance
20 activity. The relocation assistance ordered to be paid by the
21 defendant shall be in the amount necessary to cover moving costs,
22 security deposits for utilities and comparable housing, adjustment
23 in any lost rent, and any other reasonable expenses the court may
24 deem fair and reasonable as a result of the court's order.

25 (e) At the hearing to order closure pursuant to this section, the
26 court may make the following orders with respect to any displaced
27 tenant not actively involved in the nuisance:

28 (1) Priority for senior citizens, physically handicapped persons,
29 or persons otherwise suffering from a permanent or temporary
30 disability for claims against money for relocation assistance.

31 (2) Order the local agency seeking closure pursuant to this
32 section to make reasonable attempts to seek additional sources of
33 funds for relocation assistance to displaced tenants, if deemed
34 necessary.

35 (3) Appoint a receiver to oversee the disbursement of relocation
36 assistance funds, whose services shall be paid from the escrow
37 fund.

38 (4) Where a defendant has paid relocation assistance pursuant
39 to subdivision (d), the escrow account under subdivision (b) may

1 be released to the defendant and no appointment under paragraph
2 (3) shall be made.

3 (f) (1) The remedies set forth in this section shall be in addition
4 to any other existing remedies for nuisance abatement actions,
5 including, but not limited to, the following:

6 (A) Capital improvements to the property, such as security gates.

7 (B) Improved interior or exterior lighting.

8 (C) Security guards.

9 (D) Posting of signs.

10 (E) Owner membership in neighborhood or local merchants'
11 associations.

12 (F) Attending property management training programs.

13 (G) Making cosmetic improvements to the property.

14 (H) Requiring the owner or person in control of the property to
15 reside in the property until the nuisance is abated. The order shall
16 specify the number of hours per day or per week the owner or
17 person in control of the property must be physically present in the
18 property. In determining this amount, the court shall consider the
19 nature and severity of the nuisance.

20 (2) At all stages of an action brought pursuant to this chapter,
21 the court has equitable powers to order steps necessary to remedy
22 the problem and enhance the abatement process.

23 17807. On granting the temporary writ, the court or judge shall
24 require an undertaking on the part of the applicant to the effect
25 that the applicant will pay to the defendant enjoined any damages,
26 not exceeding an amount to be specified, as the defendant sustains
27 by reason of the injunction if the court finally decides that the
28 applicant was not entitled to the injunction. This bond requirement
29 shall not apply to any action brought by the district attorney, county
30 counsel, city attorney, or city prosecutor.

31 17808. The action shall have precedence over all other actions,
32 except criminal proceedings, election contests, hearings on
33 injunctions, and actions to forfeit vehicles under Division 10
34 (commencing with Section 11000) of the Health and Safety Code.

35 17809. In any action for abatement instituted pursuant to this
36 chapter, all evidence otherwise authorized by law, including
37 evidence of reputation in a community, as provided in the Evidence
38 Code, shall be admissible to prove the existence of a nuisance.

39 17810. If the complaint is filed by a citizen, it shall not be
40 dismissed by him or her for want of prosecution except upon a

1 sworn statement made by him or her and his or her attorney, setting
2 forth the reasons why the action should be dismissed, and by
3 dismissal ordered by the court.

4 17811. In case of failure to prosecute the action with reasonable
5 diligence, or at the request of the plaintiff, the court, in its
6 discretion, may substitute any other citizen consenting thereto for
7 the plaintiff.

8 17812. If the action is brought by a citizen and the court finds
9 there was no reasonable ground or cause for the action, the costs
10 shall be taxed against him or her.

11 17813. If the existence of the nuisance is established in the
12 action, an order of abatement shall be entered as part of the
13 judgment in the case, and plaintiff's costs in the action are a lien
14 upon the building or place. The lien is enforceable and collectible
15 by execution issued by order of the court.

16 17814. A violation or disobedience of the injunction or order
17 for abatement is punishable as a contempt of court by a fine of not
18 less than five hundred dollars (\$500) nor more than ten thousand
19 dollars (\$10,000), or by imprisonment in the county jail for not
20 less than one nor more than six months, or by both.

21 A contempt may be based on a violation of any court order,
22 including failure to pay relocation assistance. Notwithstanding any
23 other provision of law, any fines assessed for contempt shall first
24 be held by the court and applied to satisfaction of the court's order
25 for relocation assistance pursuant to subdivision (d) of Section
26 17806.

27 Evidence concerning the duration and repetitive nature of the
28 violations shall be considered by the court in determining the
29 contempt penalties.

30 17815. (a) If the existence of the nuisance is established in the
31 action, an order of abatement shall be entered as a part of the
32 judgment, which order shall direct the removal from the building
33 or place of all fixtures, musical instruments, and other movable
34 property used in conducting, maintaining, aiding, or abetting the
35 nuisance and shall direct their sale in the manner provided for the
36 sale of chattels under execution.

37 (b) (1) The order shall provide for the effectual closing of the
38 building or place against its use for any purpose, and for keeping
39 it enclosed for a period of one year. This subdivision is intended

1 to give priority to closure. Any alternative to closure may be
2 considered only as provided in this section.

3 (2) In addition, the court may assess a civil penalty not to exceed
4 twenty-five thousand dollars (\$25,000) against any or all of the
5 defendants, based upon the severity of the nuisance and its duration.

6 (3) One-half of the civil penalties collected pursuant to this
7 section shall be deposited in the Restitution Fund in the State
8 Treasury, the proceeds of which shall be available only upon
9 appropriation by the Legislature to indemnify persons filing claims
10 pursuant to Article 1 (commencing with Section 13959) of Chapter
11 5 of Part 4 of Division 3 of Title 2 of the Government Code, and
12 one-half of the civil penalties collected shall be paid to the city in
13 which the judgment was entered, if the action was brought by the
14 city attorney or city prosecutor. If the action was brought by a
15 district attorney or county counsel, one-half of the civil penalties
16 collected shall be paid to the treasurer of the county in which the
17 judgment was entered.

18 (c) (1) If the court finds that any vacancy resulting from closure
19 of the building or place may create a nuisance or that closure is
20 otherwise harmful to the community, in lieu of ordering the
21 building or place closed, the court may order the person who is
22 responsible for the existence of the nuisance, or the person who
23 knowingly permits the manufacture or sale of counterfeit goods,
24 to pay damages in an amount equal to the fair market rental value
25 of the building or place for one year to the city or county in whose
26 jurisdiction the nuisance is located for the purpose of carrying out
27 counterfeit goods abatement programs. If awarded to a city, eligible
28 programs may include those developed as a result of cooperative
29 programs among schools, community agencies, and the local law
30 enforcement agency. These funds shall not be used to supplant
31 existing city, county, state, or federal resources used for counterfeit
32 goods enforcement or education programs.

33 (2) For purposes of this subdivision, the actual amount of rent
34 being received for the rental of the building or place, or the
35 existence of any vacancy therein, may be considered, but shall not
36 be the sole determinant of the fair market rental value. Expert
37 testimony may be used to determine the fair market rental value.

38 17816. While the order of abatement remains in effect, the
39 building or place is in the custody of the court.

1 17817. For removing and selling the movable property, the
2 officer is entitled to charge and receive the same fees as he or she
3 would for levying upon and selling like property on execution;
4 and for closing the premises and keeping them closed, a reasonable
5 sum shall be allowed by the court.

6 17818. The proceeds of the sale of the movable property shall
7 be applied as follows:

8 (a) To the fees and costs of the removal and sale.

9 (b) To the allowances and costs of closing and keeping closed
10 the building or place.

11 (c) To the payment of the plaintiff's costs in the action.

12 (d) The balance, if any, to the owner of the property.

13 17819. If the proceeds of the sale of the movable property do
14 not fully discharge all of the costs, fees, and allowances, the
15 building and place shall then also be sold under execution issued
16 upon the order of the court or judge and the proceeds of the sale
17 shall be applied in like manner.

18 17820. (a) If the owner of the building or place has not been
19 guilty of any contempt of court in the proceedings, and appears
20 and pays all costs, fees, and allowances that are a lien on the
21 building or place and files a bond in the full value of the property
22 conditioned that the owner will immediately abate any nuisance
23 that may exist at the building or place and prevent it from being
24 established or kept thereat within a period of one year thereafter,
25 the court or judge may, if satisfied of the owner's good faith, order
26 the building or place to be delivered to the owner, and the order
27 of abatement should be canceled so far as it may relate to the
28 property.

29 (b) The release of property under this chapter does not release
30 it from any judgment, lien, penalty, or liability to which it may be
31 subject.

32 17821. Whenever the owner of a building or place upon which
33 the act or acts constituting the contempt have been committed, or
34 the owner of any interest therein, has been guilty of a contempt of
35 court, and fined in any proceedings under this chapter, the fine is
36 a lien upon the building or place to the extent of his or her interest
37 in it. The lien is enforceable and collectible by execution issued
38 by order of the court.

1 SEC. 2. Section 1161 of the Code of Civil Procedure, as
2 amended by Section 2 of Chapter 440 of the Statutes of 2008, is
3 amended to read:

4 1161. A tenant of real property, for a term less than life, or the
5 executor or administrator of his or her estate heretofore qualified
6 and now acting or hereafter to be qualified and act, is guilty of
7 unlawful detainer:

8 1. When he or she continues in possession, in person or by
9 subtenant, of the property, or any part thereof, after the expiration
10 of the term for which it is let to him or her; provided the expiration
11 is of a nondefault nature however brought about without the
12 permission of his or her landlord, or the successor in estate of his
13 or her landlord, if applicable; including the case where the person
14 to be removed became the occupant of the premises as a servant,
15 employee, agent, or licensee and the relation of master and servant,
16 or employer and employee, or principal and agent, or licensor and
17 licensee, has been lawfully terminated or the time fixed for
18 occupancy by the agreement between the parties has expired; but
19 nothing in this subdivision shall be construed as preventing the
20 removal of the occupant in any other lawful manner; but in case
21 of a tenancy at will, it must first be terminated by notice, as
22 prescribed in the Civil Code.

23 2. When he or she continues in possession, in person or by
24 subtenant, without the permission of his or her landlord, or the
25 successor in estate of his or her landlord, if applicable, after default
26 in the payment of rent, pursuant to the lease or agreement under
27 which the property is held, and three days' notice, in writing,
28 requiring its payment, stating the amount which is due, the name,
29 telephone number, and address of the person to whom the rent
30 payment shall be made, and, if payment may be made personally,
31 the usual days and hours that person will be available to receive
32 the payment (provided that, if the address does not allow for
33 personal delivery, then it shall be conclusively presumed that upon
34 the mailing of any rent or notice to the owner by the tenant to the
35 name and address provided, the notice or rent is deemed received
36 by the owner on the date posted, if the tenant can show proof of
37 mailing to the name and address provided by the owner), or the
38 number of an account in a financial institution into which the rental
39 payment may be made, and the name and street address of the
40 institution (provided that the institution is located within five miles

1 of the rental property), or if an electronic funds transfer procedure
2 has been previously established, that payment may be made
3 pursuant to that procedure, or possession of the property, shall
4 have been served upon him or her and if there is a subtenant in
5 actual occupation of the premises, also upon the subtenant.

6 The notice may be served at any time within one year after the
7 rent becomes due. In all cases of tenancy upon agricultural lands,
8 where the tenant has held over and retained possession for more
9 than 60 days after the expiration of the term without any demand
10 of possession or notice to quit by the landlord or the successor in
11 estate of his or her landlord, if applicable, he or she shall be deemed
12 to be holding by permission of the landlord or successor in estate
13 of his or her landlord, if applicable, and shall be entitled to hold
14 under the terms of the lease for another full year, and shall not be
15 guilty of an unlawful detainer during that year, and the holding
16 over for that period shall be taken and construed as a consent on
17 the part of a tenant to hold for another year.

18 3. When he or she continues in possession, in person or by
19 subtenant, after a neglect or failure to perform other conditions or
20 covenants of the lease or agreement under which the property is
21 held, including any covenant not to assign or sublet, than the one
22 for the payment of rent, and three days' notice, in writing, requiring
23 the performance of such conditions or covenants, or the possession
24 of the property, shall have been served upon him or her, and if
25 there is a subtenant in actual occupation of the premises, also, upon
26 the subtenant. Within three days after the service of the notice, the
27 tenant, or any subtenant in actual occupation of the premises, or
28 any mortgagee of the term, or other person interested in its
29 continuance, may perform the conditions or covenants of the lease
30 or pay the stipulated rent, as the case may be, and thereby save the
31 lease from forfeiture; provided, if the conditions and covenants of
32 the lease, violated by the lessee, cannot afterward be performed,
33 then no notice, as last prescribed herein, need be given to the lessee
34 or his or her subtenant, demanding the performance of the violated
35 conditions or covenants of the lease.

36 A tenant may take proceedings, similar to those prescribed in
37 this chapter, to obtain possession of the premises let to a subtenant
38 or held by a servant, employee, agent, or licensee, in case of his
39 or her unlawful detention of the premises underlet to him or her
40 or held by him or her.

1 4. Any tenant, subtenant, or executor or administrator of his or
2 her estate heretofore qualified and now acting, or hereafter to be
3 qualified and act, assigning or subletting or committing waste upon
4 the demised premises, contrary to the conditions or covenants of
5 his or her lease, or maintaining, committing, or permitting the
6 maintenance or commission of a nuisance upon the demised
7 premises or using the premises for an unlawful purpose, thereby
8 terminates the lease, and the landlord, or his or her successor in
9 estate, shall upon service of three days' notice to quit upon the
10 person or persons in possession, be entitled to restitution of
11 possession of the demised premises under this chapter. For
12 purposes of this subdivision, a person who commits an offense
13 included in subdivision (c) of Section 11571.1 of the Health and
14 Safety Code, subdivision (c) of Section 3485 of the Civil Code,
15 or subdivision (c) of Section 17802 of the Business and Professions
16 Code, or uses the premises to further the purpose of that offense
17 shall be deemed to have committed a nuisance upon the premises.
18 For purposes of this subdivision, if a person commits an act of
19 domestic violence as defined in Section 6211 of the Family Code,
20 sexual assault as defined in Section 261, 261.5, 262, 286, 288a, or
21 289 of the Penal Code, or stalking as defined in Section 1708.7,
22 against another tenant or subtenant on the premises there is a
23 rebuttable presumption affecting the burden of proof that the person
24 has committed a nuisance upon the premises, provided, however,
25 that this shall not apply if the victim of the act of domestic violence,
26 sexual assault, or stalking, or a household member of the victim,
27 other than the perpetrator, has not vacated the premises. This
28 subdivision shall not be construed to supersede the provisions of
29 the Violence Against Women and Department of Justice
30 Reauthorization Act of 2005 (Public Law 109-162) that permit the
31 removal from a lease of a tenant who engages in criminal acts of
32 physical violence against cotenants.

33 5. When he or she gives written notice as provided in Section
34 1946 of the Civil Code of his or her intention to terminate the
35 hiring of the real property, or makes a written offer to surrender
36 which is accepted in writing by the landlord, but fails to deliver
37 possession at the time specified in that written notice, without the
38 permission of his or her landlord, or the successor in estate of the
39 landlord, if applicable.

1 As used in this section, tenant includes any person who hires
2 real property except those persons whose occupancy is described
3 in subdivision (b) of Section 1940 of the Civil Code.

4 This section shall remain in effect only until January 1, 2012,
5 and as of that date is repealed, unless a later enacted statute, that
6 is enacted before January 1, 2012, deletes or extends that date.

7 SEC. 3. Section 1161 of the Code of Civil Procedure, as added
8 by Section 3 of Chapter 440 of the Statutes of 2008, is amended
9 to read:

10 1161. A tenant of real property, for a term less than life, or the
11 executor or administrator of his or her estate heretofore qualified
12 and now acting or hereafter to be qualified and act, is guilty of
13 unlawful detainer:

14 1. When he or she continues in possession, in person or by
15 subtenant, of the property, or any part thereof, after the expiration
16 of the term for which it is let to him or her; provided the expiration
17 is of a nondefault nature however brought about without the
18 permission of his or her landlord, or the successor in estate of his
19 or her landlord, if applicable; including the case where the person
20 to be removed became the occupant of the premises as a servant,
21 employee, agent, or licensee and the relation of master and servant,
22 or employer and employee, or principal and agent, or licensor and
23 licensee, has been lawfully terminated or the time fixed for
24 occupancy by the agreement between the parties has expired; but
25 nothing in this subdivision shall be construed as preventing the
26 removal of the occupant in any other lawful manner; but in case
27 of a tenancy at will, it must first be terminated by notice, as
28 prescribed in the Civil Code.

29 2. When he or she continues in possession, in person or by
30 subtenant, without the permission of his or her landlord, or the
31 successor in estate of his or her landlord, if applicable, after default
32 in the payment of rent, pursuant to the lease or agreement under
33 which the property is held, and three days' notice, in writing,
34 requiring its payment, stating the amount which is due, the name,
35 telephone number, and address of the person to whom the rent
36 payment shall be made, and, if payment may be made personally,
37 the usual days and hours that person will be available to receive
38 the payment (provided that, if the address does not allow for
39 personal delivery, then it shall be conclusively presumed that upon
40 the mailing of any rent or notice to the owner by the tenant to the

1 name and address provided, the notice or rent is deemed received
2 by the owner on the date posted, if the tenant can show proof of
3 mailing to the name and address provided by the owner), or the
4 number of an account in a financial institution into which the rental
5 payment may be made, and the name and street address of the
6 institution (provided that the institution is located within five miles
7 of the rental property), or if an electronic funds transfer procedure
8 has been previously established, that payment may be made
9 pursuant to that procedure, or possession of the property, shall
10 have been served upon him or her and if there is a subtenant in
11 actual occupation of the premises, also upon the subtenant.

12 The notice may be served at any time within one year after the
13 rent becomes due. In all cases of tenancy upon agricultural lands,
14 where the tenant has held over and retained possession for more
15 than 60 days after the expiration of the term without any demand
16 of possession or notice to quit by the landlord or the successor in
17 estate of his or her landlord, if applicable, he or she shall be deemed
18 to be holding by permission of the landlord or successor in estate
19 of his or her landlord, if applicable, and shall be entitled to hold
20 under the terms of the lease for another full year, and shall not be
21 guilty of an unlawful detainer during that year, and the holding
22 over for that period shall be taken and construed as a consent on
23 the part of a tenant to hold for another year.

24 3. When he or she continues in possession, in person or by
25 subtenant, after a neglect or failure to perform other conditions or
26 covenants of the lease or agreement under which the property is
27 held, including any covenant not to assign or sublet, than the one
28 for the payment of rent, and three days' notice, in writing, requiring
29 the performance of such conditions or covenants, or the possession
30 of the property, shall have been served upon him or her, and if
31 there is a subtenant in actual occupation of the premises, also, upon
32 the subtenant. Within three days after the service of the notice, the
33 tenant, or any subtenant in actual occupation of the premises, or
34 any mortgagee of the term, or other person interested in its
35 continuance, may perform the conditions or covenants of the lease
36 or pay the stipulated rent, as the case may be, and thereby save the
37 lease from forfeiture; provided, if the conditions and covenants of
38 the lease, violated by the lessee, cannot afterward be performed,
39 then no notice, as last prescribed herein, need be given to the lessee

1 or his or her subtenant, demanding the performance of the violated
2 conditions or covenants of the lease.

3 A tenant may take proceedings, similar to those prescribed in
4 this chapter, to obtain possession of the premises let to a subtenant
5 or held by a servant, employee, agent, or licensee, in case of his
6 or her unlawful detention of the premises underlet to him or her
7 or held by him or her.

8 4. Any tenant, subtenant, or executor or administrator of his or
9 her estate heretofore qualified and now acting, or hereafter to be
10 qualified and act, assigning or subletting or committing waste upon
11 the demised premises, contrary to the conditions or covenants of
12 his or her lease, or maintaining, committing, or permitting the
13 maintenance or commission of a nuisance upon the demised
14 premises or using the premises for an unlawful purpose, thereby
15 terminates the lease, and the landlord, or his or her successor in
16 estate, shall upon service of three days' notice to quit upon the
17 person or persons in possession, be entitled to restitution of
18 possession of the demised premises under this chapter. For
19 purposes of this subdivision, a person who commits an offense
20 included in subdivision (c) of Section 11571.1 of the Health and
21 Safety Code, subdivision (c) of Section 3485 of the Civil Code,
22 or subdivision (c) of Section 17802 of the Business and Professions
23 Code, or uses the premises to further the purpose of that offense
24 shall be deemed to have committed a nuisance upon the premises.

25 5. When he or she gives written notice as provided in Section
26 1946 of the Civil Code of his or her intention to terminate the
27 hiring of the real property, or makes a written offer to surrender
28 which is accepted in writing by the landlord, but fails to deliver
29 possession at the time specified in that written notice, without the
30 permission of his or her landlord, or the successor in estate of the
31 landlord, if applicable.

32 As used in this section, tenant includes any person who hires
33 real property except those persons whose occupancy is described
34 in subdivision (b) of Section 1940 of the Civil Code.

35 This section shall become operative on January 1, 2012.

36 SEC. 4. No reimbursement is required by this act pursuant to
37 Section 6 of Article XIII B of the California Constitution because
38 the only costs that may be incurred by a local agency or school
39 district will be incurred because this act creates a new crime or
40 infraction, eliminates a crime or infraction, or changes the penalty

1 for a crime or infraction, within the meaning of Section 17556 of
2 the Government Code, or changes the definition of a crime within
3 the meaning of Section 6 of Article XIII B of the California
4 Constitution.

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